

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

May 17, 2011

7:00 p.m. Town Hall

Present: Elaine Falender, Chair
Liza Quinn
Henry Steinberg
Carol Anne Jordan
Richard Olfene

Absent for part of the meeting: Victoria Volent

Also present was Maureen O'Meara, Town Planner.

The minutes of the April 27, 2011 meeting were approved by a vote of 5-0.

OLD BUSINESS

Golden Ridge Subdivision Amendment - Golden Ridge LLC is requesting amendments to the previously approved Golden Ridge Subdivision to create another lot located at the end of Golden Ridge Lane (U17-50,50-6), Sec. 16-2-5, Subdivision Amendment Public Hearing.

John Mitchell, Mitchell and Associates, briefly outlined the project. He talked about the total acreage and showed the plan of the subdivision that was approved in 2003. He noted that the proposal to amend the prior subdivision is to divide the current Lot 3 into two lots. Lot 3 will have 1.8 acres and Lot 4 will be a 6.9 acre parcel.

Mr. Mitchell then outlined the changes to the plans that have been made since the meeting of April 27, 2011.

They have added notes to the plan to clarify the uses outside the building envelope.

The plan now is to maintain the existing hammerhead in order to obtain a CMP easement from the existing pole in that right of way.

Three additional trees have been added and will be closer to the Young's driveway in order to optimize screening.

The original 15 ft. pedestrian easement has been removed to preserve the privacy of owners of Lot 3.

The applicant would like to preserve the right to either create a 15 ft. wide pedestrian easement over Lot 4, or to pay the impact fee. The applicant is not available to view the

proposed easement, so he would like to reserve the right to decide which option he will choose at a later date.

Ms. Falender questioned whether the easement would be limited to pedestrians and would not include snowmobiles.

Mr. Mitchell confirmed that it is the intent is to be for pedestrians and not snowmobiles, and if approved, they would create a public easement over Golden Ridge Lane.

The final change is the road maintenance agreement. They would prefer to have a single agreement covering all the lots. They have submitted two agreements, one for the front part of the road and would cover all the lot owners, and the other agreement for the last two lots only, would cover the extension of the road.

Mr. Olfene asked how the possible easement and public access to the road will effect the maintenance agreement.

Mr. Mitchell replied that he didn't think it would have any effect because there is currently a pedestrian access.

Ms. Falender opened the public hearing.

Steve Young of 8 Golden Ridge Lane said the current pedestrian easement is not part of Golden Ridge Lane, it runs beside it.

Ms. Quinn asked Mr. Young how he feels about having the easement for pedestrians.

Mr. Young replied that he is fine with it but he doesn't think it should be in the roadway at all.

No one else came forward so the public hearing was closed.

Mr. Steinberg asked whether the road maintenance would be shared proportionally, or would all pay the same amount.

Mr. Mitchell replied that there are two agreements for just that reason.

Ms. Quinn raised the question of giving the applicant the option to decide whether to pay the fee or give the easement. She also asked about keeping the easement along the side of the road instead of in the road.

Ms. O'Meara addressed the issue of allowing the applicant the option of deciding to pay the impact fee or provide the easement. She said the Board would be delegating their

authority if they allowed anyone else to decide that choice. She noted that the current trail runs immediately next to Golden Ridge Lane, and is frequently used. As for the proposed trail, she has not asked the Conservation Commission for input, so she does not know for sure how they will decide. She does think it will be difficult to maintain if the path is alongside the new section of road because it is unlikely to generate much foot traffic.

Ms. Jordan was concerned about the rebuilding of the road. She noted that the applicant wants to dig test pits to determine if the road is up to standards, and the Public Works Director feels it should be rebuilt.

Ms. O'Meara gave a history of Golden Ridge Lane. She said it was originally built as a private driveway and that the Town has no standards for a driveway. In 2003 when the subdivision was approved, it was approved as a private road and it should be built to Town private road standards. That has never happened. The Town is insisting that the road be dug up and rebuilt to standards.

Mr. Mitchell noted that he has had several talks with Mr. Malley, the Public Works Director, and they just disagree about the test pits. He says it will be expensive to dig up the road and start over instead of digging test pits. He will abide by Mr. Malley's decision unless the Planning Board decides in the applicant's favor.

There was further discussion of the details and then Mr. Mitchell said it is a done deal because Mr. Malley is not going to change his mind and unless the Board rules otherwise, the applicant will conform to what is asked of them.

Mr. Olfene then asked if it is the preference of the applicant to pay the open space fee rather than the easement.

After a discussion between the Board and Mr. Mitchell, it was determined that the applicant would decide to pay the fee if he were not given the option to decide at a later date.

The Board was not in favor of delegating their authority in this matter.

Ms. Falender asked about the downed trees and construction debris they observed on the site walk. She noted that it was represented that they would clean that debris up when this project was being done.

Mr. Mitchell said there is no note to that effect on the plans.

Ms. Falender said this is a good opportunity to clean up all the earlier problems even though they were not caused by the current owner.

Mr. Mitchell agreed to having that as a condition.

The Board then discussed how to keep the option open to have the easement. It was decided that the applicant could return to ask for a reconsideration of a vote if the plans were not yet signed by the Board.

Ms. Quinn made the following motion:

Findings of Fact

1. Golden Ridge LLC is requesting an amendment to the previously approved Golden Ridge Subdivision to add another lot at the end of Golden Ridge Lane, which requires review under Sec. 16-2-5, Amendments to Previously Approved Subdivisions.
2. The Town Engineer is recommending revisions to the plans to bring the subdivision design into compliance with town standards.
3. Preservation of landscaping should be incorporated into the development of the lots.
4. The Planning Board, by this vote, grants waivers to road design standards to permit the construction of the subdivision road as depicted on the plans.
5. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Golden Ridge LLC for an amendment to the previously approved Golden Ridge Subdivision to add another lot at the end of Golden Ridge Lane be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated May 11, 2011;
2. That a note be added to the plans indicating that downed trees and other debris near Lot 2, 8 Golden Ridge Lane, be cleaned up;
3. That written confirmation be provided from the Youngs that they grant permission for the proposed plantings and the debris cleanup or the plan will be revised to eliminate the plantings and cleanup;

4. That a note be added to the plans restricting activities outside the building envelope to the installation of driveways and utilities;
5. That road maintenance agreements be submitted in a form acceptable to the Town Attorney, signed by the applicant and any other parties and recorded in the Cumberland County Registry of Deeds.
6. That the applicant pay a \$4,455 open space impact fee.
7. That the plans be revised per the above conditions and submitted to the Town Planner for review and approval and that there be no recording of the plat until the above conditions have been satisfied.

Ms. Jordan seconded the motion and it was approved, 5-0.

Rosewood Subdivision Amendment - Joe Frustaci is requesting amendments to the previously approved Rosewood Subdivision to create another lot at the end of Rosewood Drive (U34-22-4), Sec. 16-2-5, Subdivision Amendment Public Hearing.

Rick Licht, of Licht Environmental Design and the applicant, Joseph Frustaci outlined the changes since the April 27, 2011 Planning Board meeting. The first item was the drainage easements. There will be 15 ft. easements on lots 4A and 4B to accommodate the drainage swale.

The second item was the turnaround. They revised the shape and position of the turnaround because there was not enough space to turn a fire truck. They have now reconfigured the turnaround to accommodate the truck.

The third issue was the silt fence. They have added the fence and a note to the plan.

Fourth is to add to the buffer with Lot 3. The trees have been moved from the right of way and will be added as infill in a location to be determined by the applicant.

Ms. Quinn asked about the engineer's suggestion to add a clay liner behind the boulder wall.

Ms. Falender opened the public hearing. Since no one came forward to speak, the public hearing was closed.

Ms. Quinn asked if they know the water won't go under the liner and the wall.

Mr. Licht showed a detail of the wall and explained how it and the swale will work. He said it won't affect the ground water, only the surface drainage. He also showed where the septic system would be and how it won't be able to leak out onto the abutter's property.

Mr. Steinberg was concerned about the effect of freezing and thawing on the wall.

Mr. Licht replied that the freezing would not move the large stones and that the design was to allow for some small movements. The wall will not be mortared.

Ms. Falender asked about the affordable housing provision.

Ms. O'Meara explained why she phrased the condition of approval the way it is written. She said the applicant needs to declare up front whether he will build an affordable house or sell an affordable lot.

Mr. Frustaci said he will sell the lot with a house on it. He wants to maintain control of the building of the house in his subdivision.

Ms. Quinn made the following motion:

Findings of Fact

1. Joseph Frustaci is requesting an amendment to the previously approved Rosewood Subdivision to create an additional lot located at the end of Rosewood Lane and a Private Accessway Permit for Lot 4B, which requires review under Sec. 16-2-5 of the Subdivision Ordinance.
2. The Town Engineer is recommending minor revisions to the boulder retaining wall design.
3. Preservation of landscaping should be incorporated into the development of the lot.
4. The applicant has agreed to pay a fee instead of setting aside open space.
5. The applicant has agreed to designate a new moderate income affordable housing lot in Blueberry Ridge instead of meeting the affordable housing requirement in the Rosewood Subdivision.
6. The plan includes a stormwater design that requires the establishment of drainage easements to convey water and an amended road maintenance agreement for Rosewood Drive.

7. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1, and Private Accessway standards Sec. 19-7-9.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joseph Frustaci for an amendment to the previously approved Rosewood Subdivision to create an additional lot located at the end of Rosewood Lane and a Private Accessway permit for lot 4B be approved, subject to the following conditions:

1. That the plans be revised to address paragraph 5 of the Town Engineer's letter dated 5/11/2011;
2. That a note be added to the plans restricting activities outside the building envelope to installation of driveways, utilities and regrading and retaining wall construction consistent with the stormwater design for the lot;
3. That a note be added to the plans that 5 white pines to be planted will be a minimum 6'-7' in height at time of planting and the location adjusted in the field;
4. That an open space impact fee of \$4,455 be paid;
5. That recorded restrictions for lot 3 of the Blueberry Ridge Subdivision in a form that runs with the title to the land be recorded designating that lot as a moderate income affordable lot under the Mandatory Affordable Housing provisions (Sec. 19-7-4) of the Zoning Ordinance. The applicant agrees to sell the lot with a home constructed on the lot for no more than the moderate income affordable home price applicable at that time.
6. That the Road Maintenance Agreement and drainage easements (3) be submitted in a form acceptable to the Town Attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds.
7. That the plan be revised to identify all of the abutting lots affected by the drainage easements;
8. That the plans be revised and submitted to the Town Planner for review and approval, and that all the above conditions be satisfied, prior to recording the subdivision plat.

Ms. Jordan seconded the motion and it passed 5-0.

NEW BUSINESS

Bothel Blueberries RP Permit - Adam Salve is requesting a Resource Protection Permit to remove 31,581 sq. ft of vegetation in an RP1 Buffer in order to plant high bush blueberries on the lot located behind 88 Ocean House Rd, Sec. 19-8-3, Resource Protection Permit Completeness.

Adam Salve outlined his project to plant about 700 high-bush blueberries. He showed a plan which delineated the area that now has blueberries and the area he plans to clear. There are already blueberries planted near the area he wants to clear to plant more bushes. He said the area in question is about 20 ft. above the wetland. He would like to remove 106 trees, 65 of the trees are hardwood with a diameter of less than 6 in., 12 are softwood with a diameter of less than 6 in., the rest are larger than 6 in.

He will not be changing the grade, nor will he make a change to the water flow. He will replant with grass cover prior to having the blueberries planted. All erosion control measures will be in place.

He said he is removing trees only, not any underlying vegetation. He is requesting a waiver of the stormwater plan because there is no underlying vegetation.

The project will be 146 ft. from the wetland at the closest point.

Ms. Falender asked for clarification that the reason for the permit is to remove the trees, not to add the blueberries.

Ms. O'Meara said a permit is not needed to add plantings to a buffer, but only for removal of plantings or re-grading or otherwise disturbing the area.

Ms. Volent asked about access to the parcel.

Mr. Salve said he has access across family property and an existing agricultural road.

Ms. Quinn asked why the blueberries need to be on this buffer, couldn't they be located on another part of his land.

Mr. Salve replied that the rest of his field is fenced for cattle.

Ms. Falender opened the public comment period.

Bruce McLaughlin, Attorney for Joyce Beecher who owns property at 4 Windmill Lane, spoke on her behalf. He said the main concern is that there is not enough information for the Board to review the activities proposed in and around the buffer zone. He is concerned about the impact on the entire area. The entire blueberry farm should be

considered, not just the small area being discussed here. He feels there needs to be a full site plan review. The new use is not residential and therefore needs a full site plan review. There is no description of all the facilities being used such as the road they are using, which is in the resource protection district. Mrs. Beecher will experience the parking and traffic and her septic is downhill from the project. He feels the application is not complete and he encouraged the Board to expand the review to include the entire project and the road and the parking. He also added that there is concern about the spraying of herbicides and pesticides.

Steven Bothel said most of the properties belong to him. The Board said they consider him to be an applicant, but encouraged him to speak. He said he can see site review for building or digging foundations, but this is just removing trees and planting with grass and bushes. The water flows will not be changed. He said the road is just for access, not for traffic. Blueberries do not need any sprays.

The public comment period was closed.

Ms. Falender asked Ms. O'Meara for clarification of whether site plan approval is needed, and her understanding that the Code Officer's has made a decision on that matter, and that it is not an issue for this forum.

Ms. O'Meara replied that the Code Enforcement Officer is exclusively authorized to interpret the Zoning Ordinance. Anyone who does not agree with his interpretation has the opportunity to appeal his decision to the Zoning Board of Appeals. He has made a determination that identified the project as only needing a Resource Protection Permit.

Ms. Falender asked if he had determined that a site Plan Review was not needed.

Ms. O'Meara replied that such an option is on the list referring the project to the Planning Board and that option was not checked.

Ms. Falender then asked if growing blueberries in this area is a permitted use.

Ms. O'Meara said it is permitted with a Resource Protection Permit.

Ms. Falender then reminded the Board that the issue before the Board tonight is completeness.

Ms. Volent asked if permission was needed from Rita Preston.

Ms. Falender said this is not on Rita Preston's property.

Ms. Volent said the access is on her property.

Ms. Falender said the access is not part of this application.

Mr. Olfene asked if the Town has oversight of the removal of trees.

Ms. O'Meara said the Town has authority when you are removing trees in a wetland or a wetland buffer or if you are removing a large quantity of trees.

Mr. Steinberg asked if planting blueberries instead of what is already there will change anything.

Mr. Salve said it will not change anything except that the stumps will need to be removed.

Ms. Falender said she is not comfortable waiving the high intensity soils map.

Ms. O'Meara said the high intensity soils map is good when you are installing septic systems or when delineating wetland boundaries. In this case, the wetlands have been delineated in an earlier study.

Ms. Falender said that she is more concerned about the waiver of the stormwater runoff. If we are approving clearing in the wetland buffer area we need to know that there will be no more runoff into the wetlands that may damage the wetlands.

Mr. Steinberg was also concerned about the application of fertilizer or pesticides.

Mr. Salve said they plan to grow the blueberries organically and will not use either fertilizer or pesticides.

Ms. Falender said they cannot put a condition in the approval that deals with pesticides or fertilizers.

Ms. O'Meara said that any change in the vegetation will have an effect on the stormwater runoff.

Ms. Falender said that there is also a completeness issue with the plan. The plan is not in a form that can be understood without the applicant present to explain it. And she is concerned about completeness without information about the stormwater runoff.

Ms. Quinn is concerned about the errors in the submission. She noted that grading will be done and there are errors in the sizes of the trees to be removed.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Adam Salve for a Resource Protection Permit to clear 31,581 sq. ft of RP1 wetland buffer to plant high bush blueberries on a lot located behind 88 Ocean House Rd be deemed incomplete.

Mrs. Volent seconded the motion.

Mr. Olfene wondered if the applicant needs to have any additional information about the removal of the trees.

Mr. Steinberg questioned about removing trees, what do you need to do to replace them. Can they be replaced in another nearby area.

Ms. O'Meara responded that the ordinance allows mitigation in another portion of the buffer zone.

Ms. Quinn referred the applicant to the part of the ordinance Sec. 19-8-3 to see what the Board will be looking for when they review the application for approval.

Pat Salve Bothel asked if they were not trying to plant blueberries in the specific area in consideration, would they be able to plant blueberries everywhere else.

Ms. O'Meara and Ms. Falender replied that as long as they weren't in the resource protection area, the Planning Board would not be concerned with it. They both noted that the rest would be up to the Code Enforcement Officer, Bruce Smith.

The vote to approve the motion was 6-0.

Ms. Quinn moved to adjourn, seconded by Mr. Steinberg and it passed 6-0. The meeting was adjourned at 9:40 pm.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary